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U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Ave. NW
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RE: *Inadmissibility on Public Charge Grounds*, Notice of Proposed Rulemaking, Fed. Reg. Vol. 83, No. 196; DHS Docket No. USCIS-2010-0012.

I. INTRODUCTION

The City of Chicago submits this comment in response to the proposed rules ("Proposed Rule") published by the Department of Homeland Security ("DHS") on October 10, 2018, in its Notice of Proposed Rule Making ("NPRM"), 83 Fed. Reg. 51114. Chicago submits this comment to specifically address the numerous and severe harms the Proposed Rule would impose on the City and its immigrant residents. Immigrant communities have been an enduring part of Chicago's long and diverse history, and have contributed greatly to its social, economic, and cultural success. Concurrent with the filing of this comment, Chicago, together with New York City (and joined by 31 other municipalities and local governments, and the U.S. Conference for Mayors), has filed a separate comment setting forth the grounds on which the Proposed Rule is unlawful. *See* Comment Tracking No. 1k2-9719-hjz0 at www.regulations.gov.

While the public charge rule has been used in U.S. immigration law since the 1800s, it has been consistently applied in a narrow fashion by immigration officials and immigration courts for over a century: Only those immigrants who lacked any means of self-support (typically due to physical or mental incapacity) or family support, and would therefore be entirely reliant on the government for subsistence, have been deemed likely to become public charges. Supplemental, non-cash benefits such as food stamps and housing assistance have never been considered as part of the determination. When the Immigration and Naturalization Service ("INS") sought, for the first time, to formally define public charge in 1999, it specifically exempted receipt of any supplementary, non-cash benefits from consideration, with the limited exception of long-term, institutionalized care.

The Proposed Rule seeks to greatly expand the definition of "public charge," to include, for the first time, non-cash benefits. *See* Proposed Rule § 212.21(b), NPRM at 51289-90. Specifically, DHS would now consider an immigrant's receipt of: (1) non-emergency Medicaid (with certain exceptions for benefits under the Individuals with Disabilities Education Act, other school-based benefits, and immunizations); (2) Supplemental Nutrition Assistance Program ("SNAP"), formerly called "Food Stamps"; (3) Medicare Part D low-income subsidies; and (4) several federal housing assistance programs, including Section 8 Housing Choice Voucher Program, Section 8 Project-Based Rental Assistance, and subsidized housing under the Housing Act of 1937. *Id* at 51290.[1] These benefits would be considered to not only determine which immigrants may be barred from entering the United States, but also those lawfully present who wish to adjust their status to become permanent residents.

The Proposed Rule therefore sets up a cruel and unnecessary choice for immigrant families: stop receiving critically needed aid such as food, housing, and medical services, or continue receiving aid and risk losing their ability to become permanent U.S. residents, or possibly be subject to deportation and separation from their families (including U.S- born citizen children). History teaches that, given this choice, many immigrants will choose to forgo public aid, which will make them a sicker, poorer, and less secure community.

As the third most populous U.S. city, Chicago has more than 500,000 foreign-born residents, from all over the world, living and working within its communities. This vibrant and diverse population contributes to Chicago's social and cultural fabric, as well as to its economy. Chicago welcomes these immigrants, and cares deeply about ensuring that they, along with all Chicago residents, have access to basic City services and necessities, such as food, housing, and medical care. *See, e.g., City of Chicago v. Sessions*, 321 F. Supp. 3d 855, 862 (N.D. Ill. 2018) (recognizing Chicago's "longstanding City policy of ensuring access to essential city services regardless of a resident's citizenship status"). Chicago's policy of welcoming immigrants is reflected in its Welcoming City Ordinance, Chicago Mun. Code § 2-173-010 *et seq*., and its Office of New Americans, which is dedicated to improving services to and engaging Chicago's diverse immigrant and refugee communities through collaboration with community organizations, academic institutions, and the private sector. The City opposes any action, like the Proposed Rule, that makes it more difficult for immigrants to access basic necessities, especially while adapting and integrating into their new lives.

The Proposed Rule harms Chicago and its immigrant communities in many ways. Not only would Chicago lose the value of the forgone federal benefits in its local economy, but it would also be forced to expend additional resources to compensate for the increased demand on

[1] In addition, DHS seeks comment on whether benefits received under the Children's Health Insurance Program ("CHIP") should be considered. For all of the reasons discussed herein, Chicago strongly urges DHS not to further expand the definition of public benefits to include CHIP.

its own public services. Chicago's immigrant population would likely become sicker and less successful, as food and housing insecurity contributes to joblessness, dropout rates, and poverty. The effects of the Proposed Rule would not be limited to Chicago's immigrant community, however. A rise in untreated communicable diseases could affect the health of Chicagoans citywide, resulting in a loss of productivity to businesses that employ and schools that educate. The loss of revenue from federal aid programs would likewise be felt by local business owners and service providers. For all of these reasons, discussed below, DHS should withdraw the Proposed Rule.

II. BACKGROUND

The public charge rule was incorporated into modern immigration law through the McCarran-Walter Act of 1952, codified at 8 U.S.C. § 1101 *et seq*. (the Immigration and Nationality Act or "INA"), which provides that "[a]ny alien who, in the opinion of the consular office at the time of application for a visa, or in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible." *Id*. at § 1182(a)(4)(A). The statute did not include a definition of the term public charge, but historically, public charge determinations had never included consideration of the receipt of supplemental, non-cash benefits. In 1996, Congress amended the standards for public charge, adding mandatory factors that must be considered in the determination, such as the age, income, health, and education of the applicant. *See* the Illegal Immigration Reform and Immigrant Responsibility Act, 8 U.S.C. § 1101 *et seq*. ("IIRIRA"). As in 1952, however, Congress did not formally define public charge.

Also in 1996, Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act ("PRWORA"), codified at 8 U.S.C. § 1601-1646. PRWORA imposed new restrictions on the eligibility of immigrants for many federal, state, and local benefits. While PRWORA excluded certain classes of immigrants from eligibility for certain public benefits, it did not address, much less require, that use of the public benefits still available to immigrants be considered in the public charge context. The Act caused confusion among both the immigrant community and immigration field officers, however, about whether, and to what extent, use of public benefits would be counted in any subsequent public charge determination. As a result, in 1999, INS published proposed regulations and field guidance to resolve this confusion. *See Inadmissibility and Deportability on Public Charge Grounds*, 64 Fed. Reg. 28676 (May 26, 1999), at 28681-82 ("1999 Regulations"); *see also* Field Guidance, 64 Fed. Reg. 28689 (May 26, 1999).

The 1999 Regulations formally defined "public charge" as "an alien who has become (for deportation purposes) or who is likely to become (for admission or adjustment purposes), primarily dependent on the Government for subsistence, as demonstrated by either: (1) the receipt of public cash assistance for income maintenance; or (2) institutionalization for long-term

care at government expense." 1999 Proposed Regulation § 212.102(a)(1)(i-ii), 64 Fed. Reg. at 28681. INS drafted this definition to be consistent with the statutory origin, historical purpose, and development of public charge law, as meaning "complete or near complete reliance on the Government, rather than the mere receipt of some lesser level of financial support." 64 Fed. Reg. at 28677. As INS explained, "[n]on-cash public benefits are not considered because they are of a supplemental nature and do not demonstrate primary dependence on the Government." *Id.* at 28682.

As a result, both the 1999 Regulations and the Field Guidance implementing those regulations specifically excluded non-cash welfare programs, including Medicaid and other health insurance programs; CHIP; nutrition programs such as food stamps, WIC, and school lunch programs; housing benefits; child care services; and other educational and job training programs. *Id*; *see also id*. at 28678 ("It has never been Service Policy that the receipt of any public service or benefit must be considered for public charge benefits . . . . Non-cash benefits are by their nature supplemental and frequently support the general welfare… [and] . . . serve important public interests."). The only exception was for long-term, institutionalized care, as this represented near full reliance on the government and thus was consistent with the historical meaning of "public charge."

In promulgating the 1999 Regulations, INS sought to prevent negative consequences not just for immigrants, but also for the wider public, from decreasing enrollment rates by immigrants in public benefit programs. INS found that this "chilling effect" was "creating significant, negative public health consequences across the Country," and, further, that the situation was "becoming particularly acute with respect to the provision of emergency and other medical assistance, children's immunizations, and basic nutrition programs, as well as the treatment of communicable diseases." *Id*.; *see also* Field Guidance, 64 FR at 28692 ("[C]onfusion about the relationship between the receipt of public benefits and the concept of 'public charge' has deterred eligible aliens and their families, including U.S. citizen children, from seeking important health and nutrition benefits that they are legally entitled to receive," which "has an adverse impact not just on the potential recipients, but on the public health and the general welfare.").

Thus, the 1999 Regulations were not only consistent with the historical meaning of the term public charge, but they also harmonized and advanced two other important policies: (1) providing some forms of short-term, supplemental aid helps those in need become more self-sufficient (and thus less likely to use public benefits) in the long run; and (2) providing necessary medical and health care to immigrants helps protect the health and wellbeing of all, including by preventing the spread of communicable diseases. *See* 1999 Regulations, 64 FR at 28678 (the regulations furthered "broad public policy decisions about improving general health and nutrition, promoting education, and assisting working-poor families in the process of becoming self-sufficient").

While the 1999 Regulations were never formally adopted, the Field Guidance directed that they were to be immediately followed by immigration field officers. This definition of public charge has been agency policy, and the *de facto* rule, for almost twenty years.

III. THE PROPOSED RULE WOULD HAVE A SIGNIFICANT "CHILLING EFFECT" ON IMMIGRANTS' USE OF PUBLIC BENEFITS.

The Proposed Rule's new, expansive definition of public benefits to include participation in essential non-cash programs would undoubtedly result in many immigrants and their families withdrawing from these programs, or choosing not to enroll, even though they are eligible. Its effects would reach beyond just the population it targets, however, due to its complexity and fear and confusion about how it will apply. Many immigrants (as well as their U.S.-born citizen children) would likely dis-enroll or refrain from enrolling in federal, state, and local aid programs even though these programs are not specifically included in the Proposed Rule. Likewise, many immigrants who are exempt from the public charge determination, such as Legal Permanent Residents ("LPRs"), refugees, and asylees, would choose to opt out of receiving public assistance based on confusion or fear of jeopardizing their immigration status or the status of family members.

DHS itself acknowledges this "chilling effect." *See* NPRM at 51266 ("Research shows that when eligibility rules change for public benefits programs there is evidence of a 'chilling effect' that discourages immigrants from using public benefits programs for which they are still eligible."). DHS estimates that the Proposed Rule could deter "hundreds of thousands of individuals," including U.S. citizens or others to whom the public charge rule would not even apply. *Id*. at 51268. This is a massive underestimation. Research performed after PRWORA was enacted shows that, while it limited eligibility for immigrants for many federal benefits, it also caused withdrawal from benefits programs among those "whose eligibility was unchanged by the law, including refugees and U.S.-citizen children." Jeanne Batalova et al., *Chilling Effects: The Expected Public Charge Rule and Its Impact on Legal Immigrant Families' Public Benefits Use*, Migration Policy Inst., at 15 (June 14, 2018) (hereinafter "Batalova, et al., Chilling Effects");[2] *see also id*. at 14(PRWORA "deterred many immigrants entitled to public benefits and services from using them due to confusion about eligibility criteria and fears that users would be unable to sponsor family members in the future."). Studies found that, among still-eligible recipients, food stamp use fell by 53% among U.S.-citizen children in families with noncitizen parents, while the rate fell by 60% for refugees. *See* Jenny Genser, *Who is Leaving the Food Stamp Program: An Analysis of Caseload Changes from 1994-1997*, U.S. Department of Agriculture, Food and Nutrition Service, Office of Analysis, Nutrition, and Evaluation, 1999,

[2] Available at https://www.migrationpolicy.org/research/chilling-effects-expected-public-charge-rule-impact-legal-immigrant-families.

at 2-3.[3] Studies also showed Medicaid drop-off rates of 17% among noncitizens, and 39% among refugees. *See* Michael E. Fix and Jeffrey S. Passel, *Trends in Noncitizens' and Citizens' Use of Public Benefits Following Welfare Reform*: 1994-1997, Urban Institute, 1999, at 4-6.[4]

Indeed, Chicago is already hearing reports of these effects associated with the Proposed Rule. Chicago's Department of Family & Support Services ("DFSS") provides funding assistance and administers resources to more than 300,000 Chicagoans each year through its citywide network of more than 300 community-based delegate agencies. Representatives at DFSS delegate agencies have reported a concerning uptick in anxiety and fear about the Proposed Rule in the immigrant communities that they serve. As a result, these agencies have seen participants failing to enroll in local programs or keep scheduled appointments at community providers, even though these programs would not count in the public charge determination.

For example, DFSS administers funding for Chicago's Head Start and Early Head Start programs, which provide free learning and development services, including nutritional aid, to children from low-income families from birth to five years old. *Id*. One of the delegate agencies that connects families to these programs on Chicago's south and west sides, Gads Hill Center, has had difficulty getting parents to follow up with needed enrollment paperwork, because families are fearful that enrollment in Head Start will be considered in the public charge determination. Likewise, Shining Star Youth and Community Services serves more than one hundred families through Head Start, approximately 30% of which are immigrant families; the agency reported to DFSS that some of the families have opted to keep their children at home. These children may then go hungry or get sick, requiring more assistance from the City.

The Proposed Rule is also impacting other local youth programs. El Valor is a DFSS delegate agency that provides early childhood education services. Their clients in Pilsen, Little Village, and South Chicago are expressing concerns about losing benefits and future eligibility for residency or citizenship if they continue to accept these services for their children. The National Youth Advocate Program, a DFSS delegate agency that provides after-school programing and serves mainly immigrant families, has noted that undocumented parents are afraid to apply for health insurance or SNAP benefits for their children, even if the children are U.S. citizens. And the Boys & Girls Clubs of Chicago, which provide after-school and weekend programs to youth that include immigrant children, has received many questions about the Proposed Rule, as well as experienced a decline in participation based on concerns about it.

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[3] Available at https://fns-prod.azureedge.net/sites/default/files/cdr.pdf.

[4] Available at https://www.urban.org/research/publication/trends-noncitizens-and-citizens-use-public-benefits-following-welfare-reform.

The City also provides funding for the National Immigrant Justice Center (NIJC), which provides legal support to immigrants at all stages of their immigration process and cases. NIJC reports that many people have questions about the Proposed Rule and how it will affect their immigration cases, often displaying misunderstanding regarding which benefits and immigrants will be covered. For example, a lawful permanent resident came to NIJC under the misimpression that she would lose her status in the United States because she lives in subsidized housing. Another client was concerned that receiving free legal services from NIJC could mean that he was receiving public benefits. Yet another client told lawyers at NIJC that she cancelled her free mammogram appointment out of concern that this could jeopardize her ability to adjust her immigration status in the future.

As these examples show, the Proposed Rule is sowing tremendous confusion and fear among Chicago's immigrant residents, causing them to relinquish critical aid for medical services, shelter, and food, as well as other supplemental aid that is not even included in the public charge determination. And this trend is not limited to Chicago. Nationally, SNAP participation by recent immigrations declined by 10% in 2018 after a decade of increases. Researchers believe the cause may be the ominous rhetoric that has come to pervade the national conversation on immigration, as well as recent federal efforts on detention and deportation.[5] In addition, the years-long decline in the number of uninsured children has suddenly been reversed. There are now nearly 300,000 more children who lack health insurance.[6] This worrisome trend will only intensify if the Proposed Rule becomes final.

IV. THE PROPOSED RULE WILL SIGNIFICANTLY HARM CHICAGO AND ITS IMMIGRANT RESIDENTS.

Based on the historically documented chilling effects after PRWORA was enacted, the Proposed Rule could result in anywhere from a 25% to 37% decline in immigrants' use of federal benefits. *See* Batalova, et al, *Chilling Effect*, at 4. Nationwide, nearly 12 million immigrants (approximately 28% of the legal immigrant population) used at least one of the major federal benefit programs – Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Medicaid/CHIP, and SNAP – between 2014 and 2016. *Id*. at 18-19. Thus, even if the Proposed Rule caused a chilling effect of only 25%, nearly 3 million immigrants nationwide would be affected, showing that DHS's estimate that "hundreds of thousands" could be deterred by the Proposed Rule is grossly miscalculated.

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[5] Bovell-Ammon, Allison, Children's HealthWatch at Boston University Medical Center. Presentation at American Health Association Annual Meeting and Expo, November 18, 2018. Available at https://www.apha.org/news-and-media/news-releases/apha-news-releases/2018/annual-meeting-snap-participation.

[6] Alker, Joan, and Pham, Olivia. "Nation's Progress on Children's Health Coverage Reverses Course," Center for Children and Families at Georgetown University Health Policy Institute. November 2018. Available at https://ccf.georgetown.edu/wp-content/uploads/2018/11/UninsuredKids2018_Final_asof1128743pm.pdf

The chilling effect in Chicago would be substantial. Based on census data gathered by the U.S. Census Bureau through its annual American Community Survey ("ACS"), Chicago's 2017 population was 2,716,462, which is approximately 21% of the total population of the State of Illinois.[7] According to DHS's Office of Immigrant Statistics, approximately 540,000 LPRs reside in Illinois.[8] Therefore, Chicago likely has at least 113,400 LPRs, or 21% of 540,000 (although this number is probably higher because of the concentration of immigrants in the Chicago area). It is thus reasonable to estimate that the relevant population of those immigrants directly affected by the public charge rule living in Chicago would be approximately 113,400.[9]

Approximately 37.22% of Chicago's population, or 1,011,185 individuals, receive Medicaid coverage. *See* Illinois Department of Health and Family Services, Info Center, Facts & Figures (Total Medicaid enrollment in 2017 by zip code).[10] Assuming the same rate of usage by LPRs, 42,212 immigrants currently receive Medicaid benefits (37.22% of 113,540). DHS calculates the average annual value of Medicaid at $7,426.59 per person. *See* NPRM at 51160 (Table 10). Thus, a 25% chilling effect rate among immigrants would total $78,373,545.88 in lost Medicaid benefits; at 37%, the total would be $115,992,847.91.

For Medicare Part D, approximately 3.93% of Chicago's total population, or 106,661 individuals, receive subsidies. *See* Centers for Medicaid and Medicare Coverage, Medicare Advantage/Part D Enrollment Data Enrollment Data by County (calculated using the population ratio of Chicago within Cook County).[11] Again assuming the same rate of usage by LPRs, 4,453 immigrants residing in Chicago receive this benefit. DHS calculates the average annual value of Medicare Part D subsidies at $2,099.17 per person. See NPRM at 51160 (Table 10). Thus, a 25% chilling effect rate among immigrants would cost $2,336,696.31 in lost benefits; at 37%, the total would be $3,458,310.54.

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[7] *See* https://censusreporter.org/profiles/16000US1714000-chicago-il.

[8] See https://www.dhs.gov/sites/default/files/publications/lawful permanent residents 2017.pdf

[9] Although LPRs are not directly affected by the Proposed Rule, this number is a good baseline for projecting the number of immigrants and their families living in Chicago who would be directly affected by the Proposed Rule—*i.e*., temporary legal immigrants who are seeking to adjust their status to LPR status, especially since the chilling effect of the Proposed Rule would extend to LPRs and other exempt immigrants, as explained in Part III. Indeed, due to the chilling effect, this number is likely an underestimation.

[10] https://www.illinois.gov/hfs/info/factsfigures/Program%20Enrollment/Pages/HFSEnrolmentZipCodeSearch.aspx.

[11] https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MCRAdvPartDEnrolData/index.html

Approximately 16.76% of Chicago's total population, or 455,168 individuals, receive SNAP benefits. *See* Illinois Dep't of Human Servs., SNAP Enrollment Data by County.[12] Assuming the same rate of usage among LPRs, approximately 19,001 immigrants receive these benefits in Chicago. DHS calculates the average annual value of SNAP benefits at $1,527.59 per person. See NPRM at 51160 (Table 10). Thus, a 25% chilling effect rate would cost $7,256,518.97 in lost SNAP benefits; at 37%, the total would be $10,739,648.08.

While these figures are not precise, they show that it is reasonable to expect that, in Chicago alone, the total benefits lost could be anywhere from $87,966,761.16 to $130,190,806.53. As now explained, the loss of these benefits would have a significant impact on Chicago and its residents, especially its immigrant residents, in many ways.

A. Including Medicaid and Medicare Part D in the Public Charge Determination Will Shift Costs to Chicago and Have Devastating Health Consequences.

The Proposed Rule's inclusion of Medicaid and Medicare Part D subsidies in the public charge determination would have numerous, wide-ranging negative effects on Chicago, its immigrant population, and its residents citywide.

1. Chicago Would Bear Direct, Increased Costs as the Demand for City-Funded Services Increases.

Chicago would bear significant, direct costs resulting from the decision by eligible immigrants to dis-enroll from or forgo participation in the Medicaid and Medicare Part D programs. As immigrants stop using available federal health programs, they will look to Chicago's local programs to fill this gap. This increased demand on Chicago's resources will come at a high cost to taxpayers. *See* NPRM at 51260 (recognizing that the Proposed Rule will shift "costs to various entities that the rule does not directly regulate, such as hospital systems, state agencies and other organizations that provide public assistance to aliens and their households").

Through its Department of Public Health ("CDPH"), and through partnership with other community-based health centers, Chicago offers a wide variety of preventative, treatment, and health educational services. *See* City of Chicago's Department of Public Health, *Health Services*, Programs & Initiatives.[13] These services include: (1) five walk-in immunization clinics operated throughout the City, as well as a Mobile Immunization CareVan, which provide vaccinations for adults and children beginning at birth; (2) five STI (sexually-transmitted infection) and HIV early-intervention clinics to diagnose and treat common sexually-transmitted

[12] http://www.dhs.state.il.us/page.aspx?item=93239

[13] Available at https://www.cityofchicago.org/city/en/depts/cdph/provdrs/health_services.html.

infections; (3) administering the Supplemental Nutrition Program for Women, Infant and Children (WIC) program, which provides supplemental foods, health care referrals, and nutrition education for pregnant, breastfeeding, and non-breastfeeding postpartum women, and to qualifying infants and children under the age of five; and (4) connecting residents to mental health and counseling services. *Id*.

CDPH sees everyone who walks into its clinics at no cost, regardless of whether they have insurance coverage. *Id*. However, for those with Medicaid coverage, CDPH is able to recover most of its costs through reimbursement from the federal government. As immigrants choose to forgo Medicaid coverage, CDPH will see an increase in uninsured patients, and thus have to rely on its own resources to cover these patients' visits, procedures, and treatment. *See, e.g.,* Alice J. Lam and Allison B. Orris, Manatt on Health: Medicaid Edition, *Proposed Public Charge Regulation Could Have Significant Coverage Impact* (October 30, 2018) at 5 ("Safety net providers, including hospitals and community health centers, are likely to feel the effects most acutely.");[14] Batalova, et al., *Chilling Effects*, at 31 ("Immigrants' withdrawal from subsidized health insurance programs could lead to higher levels of unsubsidized care and higher unreimbursed costs."); Krista M. Perreira, et al., *A New Threat to Immigrants' Health – The Public Charge Rule*, 901 New Eng. J. Med. 903, 903 (Sept. 12, 2018) ("[H]ealthcare providers such as federal qualified health centers and public hospitals" would be hit especially hard by the Proposed Rule).[15]

Indeed, even though the Proposed Rule has not been formally adopted, Chicago is already experiencing a decline in the percentage of pediatric patients with Medicaid coverage at its clinics. While CDPH vaccinates nearly 14,000 patients per year through all of its immunization services combined, between June and October of 2017, it encountered 2998 patients aged 0-18 at its immunization clinics. Out of this total, 51.57% (1546) had Medicaid coverage and 48.43% (1452) were uninsured. During the same June through October period in 2018, however, CDPH encountered 2383 patients aged 0-18 years at its immunization clinics, of which 44.61% (1063) had Medicaid coverage and 55.39% (1320) were uninsured. Thus, CDPH has already seen a 6% decrease of patients with Medicaid, and a corresponding increase in patients who are uninsured. This number will likely rise if the Proposed Rule becomes final.

Furthermore, without Medicaid coverage, many immigrants and their families will refrain from seeking basic health care services altogether. *See, e.g.,* Mitchell H. Katz, MD, Dave A. Choksi, MD, "The 'Public Charge' Proposal and Public Health: Implications for Patients and

[14] Available at https://www.manatt.com/Insights/Newsletters/Manatt-on-Health-Medicaid-Edition/Proposed-Public-Charge-Regulation-Could-Have

[15] Available at https://www.nejm.org/doi/full/10.1056/NEJMp1808020?url

Clinicians," JAMA, (October 1, 2018) ("Even though the Rule is not final, "there have been reports of immigrants avoiding health care for concern of being considered a public charge.").[16] Forgoing basic primary care increases health costs to Chicago, because it causes a rise in more expensive, emergency care for unmanaged chronic conditions, or other conditions that could have been detected through routine exams. *See* Manatt on Health at 5 ("this policy shift could cause costs to rise for providers, particularly in states and communities with high numbers of lawfully present immigrants, as people affected by the change avoid preventative healthcare services or chronic care management"); *see also Henry J. Kaiser Family Foundation,* Proposed Changes to Public Charge Policies for Immigrants, Implications For Health Coverage, (Sept. 24, 2018) (preventative care reduces need for more costly emergency care).[17] CDPH nurses report that they have recently been encountering immigrant families, including those who have resided in Chicago for years, with uninsured children who do not have a primary care physician or a well-child health care plan, due to concerns over the changes associated with the Proposed Rule. One family described a child being hospitalized for an asthma attack because they stopped using their benefits, and could not afford the asthma medication without insurance coverage. This troubling pattern will only increase.

Increased usage of emergency care would also drive up Chicago's ambulance costs. Chicago's Fire Department provides ambulance services to all individuals needing emergency transport and care. The estimated cost to Chicago for ambulance service is approximately $1,900 per transport, while Medicaid offers some supplemental reimbursement payments. Thus, not only will the rate of emergency transports increase due to unmanaged care, but Chicago's ability to recoup costs from Medicaid will correspondingly decrease.

Chicago would also see an increased demand for its mental health treatment services. To help meet the mental health needs of its uninsured residents, CDPH provides free clinical mental health services in five CDPH-operated clinics throughout the City. These clinics provide an array of free services, including comprehensive mental health assessments, individualized treatment planning, crisis intervention, individual counseling, group therapy, medication monitoring, case management, psychosocial rehabilitation, and anger management. Those forgoing Medicaid will no longer have private or community resources available to treat mental health issues and will thus place more of a demand on these City services.

[16] Available at https://jamanetwork.com/journals/jama/fullarticle/2705813.

[17] Available at https://www.kff.org/disparities-policy/fact-sheet/proposed-changes-to-public-charge-policies-for-immigrants-implications-for-health-coverage.

2. Chicago Would Also Bear Indirect Costs Associated With Having a Sicker Population.

The impact on Chicago is not limited to these direct economic costs, however. Chicago has strong interests in ensuring that its immigrant residents can access the benefits and services they need, to protect not only their health and wellbeing but also that of the community at large. As discussed above, the Proposed Rule would cause a decrease in preventative care in Chicago's immigrant community, which would result in an overall sicker and less productive population. *See, e.g.*, Sommers BD, Blendon RJ, Orav EJ, Epstein AM, Changes in utilization and health among low-income adults after Medicaid expansion or expanded private insurance, JAMA Intern Med 2016;176, at 1501-09 (health insurance is associated with better primary and preventative care, such as screenings for hypertension, high cholesterol, and HIV, as well as cervical, prostate, and breast cancer);[18] Batalova, et al., *Chilling Effects* at 5 ("For individuals, families, and local communities, reduced program participation could result in higher poverty levels, reduced access to health care, and an increase in severe and chronic health issues."). While DHS acknowledges these "follow-on" effects of the Proposed Rule, it greatly downplays them. *See* NPRM at 51270 (noting that the Proposed Rule may result in some worse health outcomes, such as an increased prevalence of obesity and malnutrition and reduced prescription adherence, and an increased prevalence of communicable disease).

The health effects would be particularly hard felt by pregnant women and children. *See* Sharon Parrott et al., Trump "Public Charge" Rule Would Prove Particularly Harsh for Pregnant Women and Children, Ctr. On Budget & Policy Priorities, at 2 (May 1, 2018).[19] Pregnant women who dis-enroll from or forgo Medicaid and therefore lack insurance are at greater risk for poor birth outcomes, including higher rates of infant and maternal mortality. *Id*. And the impact on young children "can start before birth, when the lack of prenatal care and nutrition assistance for their mothers could affect their birth and early health outcomes, and extend decades into the future, diminishing their opportunity to thrive in tangible and entirely preventable ways." *Id*. Moreover, the Proposed Rule would likely cause pregnant women and children to dis-enroll from other essential health and nutritional programs for pregnant woman, new mothers, and their infant children, such as WIC and CHIP, due to the confusion surrounding which benefits will be considered in the public charge determination. Thus, forgoing these aid programs would put the health of mothers and their newborns at even greater risk.

Having health insurance also helps individuals treat and manage their mental health problems and substance use disorders. For example, one study found that "Medicaid coverage

[18] Available at https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2542420

[19] Available at https://www.cbpp.org/research/poverty-and-inequality/trump-public-charge-rule-would-prove-particularly-harsh-for-pregnant-women-and-children.

reduced the prevalence of undiagnosed depression by almost 50% and untreated depression by more than 60%." Baicker K, Allen JL, Wright BJ et al., *The effect of Medicaid on management of depression: evidence from the Oregon Health Insurance Experiment*, Milbank Quarterly, 2018; 96, at 29-56;[20] *see also* Wu LT, Kouzis AC, Schlenger WE, *Substance use, dependence, and service utilization among the U.S. uninsured nonelderly population*, AM J Pub. Health 2003; 93(12): 2079-2085 (compared with privately insured, uninsured persons had increased odds of having alcohol/drug dependence and appeared to face substantial barriers to health services for substance use problems).[21] Of course, untreated medical and mental health conditions will impair immigrants' ability to perform and maintain their jobs, which will further perpetuate a cycle of hardship and poverty.

Importantly, these negative health effects are not limited to the immigrant community, but will be felt by Chicago as a whole. This is most particularly true with communicable diseases. Without insurance coverage, vaccination rates and treatment for communicable diseases will decline, especially since obtaining vaccinations and screening for infectious diseases is often part of other routine clinical services such as sick visits and annual check-ups that many immigrants will forgo. *See* Mitchell H. Katz, MD, Dave A. Choksi, MD, "The 'Public Charge' Proposal and Public Health: Implications for Patients and Clinicians," JAMA, (October 1, 2018), at 3-4.[22] Indeed, the Legal Council for Health Justice, an Illinois non-profit agency, has already been hearing concern from immigrants living with HIV that the Proposed Rule, if finalized, will cause them to avoid accessing health care and necessary medications. Immigrants at risk of contracting HIV may decide not to get tested regularly—and infants, too, would be at greater risk due to the possibility of mother-to-child transmission.

Untreated communicable diseases, including HIV, hepatitis, chicken pox, measles, influenza, and whooping cough, can spread quickly across entire populations. Thus, as more immigrants forgo vaccinations and treatment for these infectious diseases, the entire Chicago community will be at risk for contracting them. For example, whooping cough, pertussis, mumps, and measles outbreaks have all occurred in the City since the spring of 2018. This will result in not only a sicker population, but also drive up health care costs to individuals and Chicago's healthcare providers. In addition, an increased prevalence of communicable diseases results in more school and work absences for all Chicago residents, causing a further financial impact on individuals and the City.

[20] Available at https://www.ncbi.nlm.nih.gov/pubmed/29504203/

[21] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1283119/

[22] Available at https://jamanetwork.com/journals/jama/article-abstract/2705813

Health care providers will also feel a heavy burden. Cutting Medicaid coverage will result in more uncompensated care, which in turn could destabilize the health care system in Chicago and across the country. The DHS proposal itself acknowledges such an effect but does not estimate the extent of it. Numbers from 2017 suggest providers nationwide would lose some $68 billion annually. *See* Center for Medicare and Medicaid Services, "Unduplicated Number of Children Ever Enrolled in CHIP and Medicaid." [23] In Chicago, the two hospitals run by Cook County alone stand to lose nearly $30 million. These losses would have harmful ripple effects throughout Chicago's communities.

B. Including SNAP Benefits in the Public Charge Determination Will Result in Lost Revenue for Chicago and Increased Hunger Among Its Immigrant Residents.

Like the Medicaid and Medicare Part D programs, the Proposed Rule is already having an effect on the use of SNAP benefits by immigrants and their families, which, in turn, has negative effects on Chicago's immigrant community as well as its economy. Recent reports show that "fewer people are using an array of food programs, including [WIC], [SNAP] and food banks." Emily Baumgaertner, Spooked by Trump Proposals, Immigrants Abandon Public Nutrition Services, N.Y. Times, (March 6, 2018);[24] *see also* Helena Bottemiller Evich, Immigrant Families Appear to Be Dropping Out of Food Stamps, Politico (Nov. 14, 2018) ("Immigrant households legally eligible for food-stamp benefits stopped participating in the program at a higher-than-normal-rate in the first half of this year[.]").[25]

Decreased usage of SNAP benefits is associated with a direct, financial impact on Chicago itself as a result of the loss of revenue that federal food assistance provides. *See* U.S. Department of Agriculture ("USDA"), *SNAP Benefit State Toolkit* (2008), at 8 (SNAP benefits "ripple throughout the economies of the community, State, and Nation").[26] The USDA estimates that every $5 in new SNAP benefits generates $9.20 in community spending (*i.e.*, the SNAP benefits go into the local economy and are then spent almost twofold on other items and services), and every additional dollar's worth of SNAP benefits generates 17 to 47 cents of new spending on food alone. *Id*. With lower numbers of immigrants using SNAP benefits to purchase food, this revenue source for the local economy would decline, and local grocers, food stores, and even regional and national supermarket chains that employ local Chicago residents will feel the effects. In turn, these local business owners will have less money to spend in other economic sectors, and their employees may see reduced hours or even lose their jobs.

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[23] Available at https://www.medicaid.gov/chip/downloads/fy-2017-childrens-enrollment-report.pdf.

[24] Available at https://www.nytimes.com/2018/03/06/us/politics/trump-immigrants-public-nutrition-services.html.

[25] Available at https://www.politico.com/story/2018/11/14/immigrant-families-dropping-out-food-stamps-966256.

[26] https://www.fns.usda.gov/snap/snap-program-access-toolkit

The downstream effects of inadequate nutrition and food security, however, are much more profound. Food is a basic human need. Including SNAP benefits in the public charge determination would discourage immigrants and their children from receiving basic nutritional aid, which would have devastating effects on their health and wellbeing, and negatively impact their ability to be self-reliant and successful in the future.

First, inclusion of SNAP benefits would significantly harm immigrants' health. Food-insecure households are likely to have serious medical needs, and discouraging immigrants from enrolling in SNAP will exacerbate this problem. Low-income adults enrolled in SNAP spent 25% less on medical care when compared to those who qualify for SNAP but are not enrolled. *See* Carlson S & Keith-Jennings B, Ctr. on Budget & Policy Priorities 1 (2018).[27] Use of SNAP benefits is associated with reduced hospital admissions among older adults, and fewer sick days and outpatient visits among adults overall. *See* Food Research and Action Center, *The Role of the Supplemental Nutrition Assistance Program in Improving Health and Well-Being* (December 2017).[28] Studies also show that: (1) nearly one-third of households that reported low food security also reported skipping medications to save money (Herman, D., et al, 105 American J. of Public Health 10: *Food Insecurity and Cost-Related Medication Underuse Among Nonelderly Adults in a Nationally Representative Sample*, (2015) at 48-59); (2) elderly SNAP participants are less likely to report cost-related medication underuse than eligible non-participants (Srinivasan, M., PhD., & Pooler, J. A., 108 American J. of Public Health 2: *Cost-Related Medication Nonadherence for Older Adults Participating in SNAP, 2013–2015*, (2018), 224-230); and (3) individuals in SNAP households were at greater risk for death when compared to non-participants and to those eligible but not enrolled (Conrad, Zach, PhD., M.P.H., *et al*., 107 American J. of Public Health 3: *Cardiometabolic Mortality by Supplemental Nutrition Assistance Program Participation and Eligibility in the United States* (2017), at 466-74).

The impact may be particularly pronounced on children in immigrant families, including U.S.-born children. Studies show that food-insecure children are almost twice as likely to experience poor physical and mental health compared to children in food-secure families, including increased risk for anemia, asthma, poor oral health, cognitive problems, and depression. *See* Gunderson C. and Ziliak J., 34 Health Affairs 11: *Food Insecurity and Health Outcomes* (2105), at 1830-39 (collecting studies and noting SNAP's success at alleviating some of these problems in children).[29] An inadequate food supply has also been shown to impair

[27] Available at https://www.cbpp.org/research/food-assistance/snap-is-linked-with-improved-nutritional-outcomes-and-lower-health-care.

[28] Available at http://frac.org/research/resource-library/snap-public-health-role-supplemental-nutrition-assistance-program-improving-health-well%e2%80%90being-americans

[29] Available at https://www.ncbi.nlm.nih.gov/pubmed/26526240

social development in younger children, including greater risks for psychosocial dysfunction and attention problems. *See* Alaimo, K., Olson, C. M., & Frongillo, E. A., *Family Food Insufficiency, but Not Low Family Income, Is Positively Associated with Dysthymia and Suicide Symptoms in Adolescents*, The Journal of Nutrition, 132(4) at 719-725 (2002).[30] Among 6- to 12-year-old children, food insecurity is associated with increased visits to a psychologist, anxiety, aggression, psychosocial dysfunction, and difficulties getting along with other children. *See* Murphy, J. M., Wehler, C. A., Pagano, M. E., Little, M., Kleinman, R. E., & Jellinek, M. S., *Relationship Between Hunger and Psychosocial Functioning in Low-Income American Children (Journal of the American Academy of Child & Adolescent Psychiatry*, 37(2) (1998) at 163-170.[31] And among 15 to 16-year-old adolescents, food insufficiency was associated with depressive disorders and suicide symptoms after controlling for income and other factors. *See* Aliamo, Family Food Insufficiency, at 720.

Second, lack of adequate nutrition leads to lower job security and lower incomes. Historically, SNAP has been utilized by low-income families to temporary supplement income earned from jobs with low wages, unpredictable schedules, and no benefits such as paid sick leave — all of which contribute to high turnover and spells of unemployment. *See* Brynne Keith-Jennings and Raheem Chaudhry, C'tr on Budget & Pol. Priorities (2108): *Most Working-Age Snap Recipients Work, but Often in Unstable Jobs* ("Low-wage workers, including many who participate in SNAP, are more likely than other workers to experience periods when they are out of work or when their monthly earnings drop, at least temporarily.").[32] This leads "many adults to participate in SNAP temporarily, often while between jobs or when their work hours are cut . . . [while others], such as workers with steady, but low-paying, jobs, or those unable to work, participate on a longer-term basis." *Id*. Indeed, "SNAP's dual function as both a short-term support to help families afford food during a temporary period of low income and a support for others with longer-term needs is one of its principal strengths." *Id*. Without this supplemental aid, Chicago's immigrant community would experience more job insecurity and loss of wages, and potentially unemployment.

Third, food insecurity and inadequate nutrition affects attendance, behavior and performance of children in school. *See, e.g.,* MacIver, M.A. & MacIver, D.J., The George Washington University Center for Equity and Excellence in Education: *Beyond the indicators:*

[30] Available at https://academic.oup.com/jn/article/132/4/719/4687337

[31] Available at https://www.ncbi.nlm.nih.gov/pubmed/9473912

[32] Available at https://www.cbpp.org/research/food-assistance/most-working-age-snap-participants-work-but-often-in-unstable-jobs

An integrated school-level approach to dropout prevention (2009) at 3-8.[33] Food insecurity has been correlated with poorer reading and math skills among both boy and girls at kindergarten through third grade. *See* Jyoti, D. F., Frongillo, E. A., & Jones, S. J. (2005), Food Insecurity Affects School Children's Academic Performance, Weight Gain, and Social Skills, The Journal of Nutrition, 135(12), at 2831-2839.[34] Children aged 6 to 12 who experience food insufficiency were more likely to experience absenteeism and tardiness. *See* Kleinman, R. E., Murphy, J. M., et al., *Hunger in Children in the United States: Potential Behavioral and Emotional Correlates,* Pediatrics,101(1) (1998).[35] All of these factors contribute to higher risk of dropout rate. *See* Cathy Hammond, National Dropout Prevention Center/Network, Dropout Risk Factors and Exemplary Programs; A Technical Report (May 2007).[36]

Even a small increase in high school dropout rates can have sizeable and long-term economic impacts associated with lost wages and taxable income, and increased health care, welfare, and incarceration costs. For example, just under one third of high school dropouts receive food stamps, compared with 17.3% of high school graduates, and 8.6% of Associate's degree holders. *See* PBS Newshour, PBS News Study, ***Behind the Numbers: Why Dropouts Have It Worse Than Ever Before.***[37] Less than one half of high school dropouts in Illinois (46%) own a home, compared with 61% of high school graduates, and 70% of those with an Associate's degree. *Id*. And the average lifetime earnings of U.S.-born high school dropouts in Illinois was $595,000, while high school graduates earned an average of $1,066,000, and for those with an Associate's degree that figure is $1,509,000. *Id*.; *see also* National Public Radio Special Series, School Dropout Rates Add to Fiscal Burden, July 24, 2011("A high school dropout, according to the latest statistics, will earn $200,000 less than a high school graduate over his or her lifetime, and almost a million dollars less than a college graduate").[38] A recent report calculated that a 4% increase in high school graduation rates for Chicago-Naperville-Elgin area (of which Chicago makes up 91.3% of the total population) impacted the economy by $210 million. *See* The Alliance for Excellent Education, *The Graduation Effect,* at 1.[39] Thus, the

[33] Available at https://files.eric.ed.gov/fulltext/ED539776.pdf

[34] Available at https://www.ncbi.nlm.nih.gov/pubmed/16317128

[35]https://www.researchgate.net/publication/13813423_Hunger_in_Children_in_the_United_States_Potential_Behavioral_and_ Emotional_Correlates

[36] Available at https://files.eric.ed.gov/fulltext/ED497057.pdf

[37] Available at https://files.eric.ed.gov/fulltext/ED497057.pdf

[38] Available at https:// www.npr.org/2011/07/24/.../school-dropout-rates-adds-to-fiscal-burden

[39] Available at https://all4ed.org/articles/the-graduation-effect-increasing-national-high-school-graduation-rate-key-to-job-creation-and-economic-growth-new-alliance-analysis-finds/

impact of even a 1% decrease in high school graduation rates could be approximately $50 million.

Accordingly, not only would a decrease in SNAP participation lead to significant health problems among immigrants and their families, but it would also affect job stability, school performance, and dropout rates. All of these consequences, as well as the impact of a loss of SNAP benefits on the local economy, would have a negative impact on Chicago and its residents.

C. Including Housing Assistance in the Public Charge Determination Will Increase Homelessness in Chicago and Place Greater Demand on City Services.

Like medical and food aid, the Proposed Rule's expansion to include federal housing vouchers and rental assistance would also have adverse effects on Chicago and its residents by creating housing insecurity and more homelessness. *See*, *e.g.*, National Law Center on Homelessness & Poverty, National Housing Law Project, *Trump Administration's "Proposed Public Charge" Rule, What Housing and Homelessness Advocates Should Know*, Oct. 2, 2018 (discussing likely increased rates of homelessness and housing insecurity due to the Proposed Rule).[40]

Through DFSS, Chicago assists residents and funds numerous programs to prevent homelessness, and to care for its homeless population. For example, DFSS operates an Emergency Rental Assistance program, which provides short-term financial assistance for rent, utilities, arrears, and other costs related to housing stability, in order to stabilize individuals and families in their existing rental units to prevent homelessness. DFSS also operates the Rapid Re-Housing program, which helps individuals and families who are homeless move as quickly as possible from shelters into permanent housing, through a combination of short-to-medium term rental assistance and supportive services. DFSS' Homeless Outreach and Prevention team works with delegate agencies to engage unsheltered homeless residents living near railroad tracks, bridges, the Chicago River, viaducts and alleys, parks, and train stations into services that will lead to housing or shelters. *Id*. DFSS also provides funding to eight agencies that operate daytime drop-in centers providing homeless residents basic services such as meals, showers, laundry, and quiet safe places. *Id*. Finally, DFSS works in close coordination with the Chicago Continuum of Care, a local body of stakeholders invested in ending homelessness. If immigrants withdraw from federal housing assistance programs, Chicago would see an increased demand for these services.

Furthermore, immigrants who decline to use available federal housing assistance may have to compensate for the loss of this assistance by spending less money on food or other

[40] Available at https://www.nhlp.org/wp-content/uploads/Public-Charge-and-Housing-Webinar-11.8.18-Slides.pdf

necessities. This, in turn, causes downstream effects on their overall health and wellbeing. Lack of housing stability and homelessness can cause individuals to experience increased hospital visits, loss of employment, and mental health problems. *See, e.g.*, Kristin F. Butcher, Assessing the Long-Run Benefits of Transfers to Low-Income Families, Brookings Metro (January 2017) (citing findings that there were long-term improvements in income and educational outcomes for individuals who received housing assistance as young children that transferred them to lower poverty neighborhoods);[41] Sandra J. Newman et al., The Long-Term Effects of Housing Assistance on Self-Sufficiency, U.S. Department of Housing and Urban Development, December 1999 (housing assistance increases health and self-sufficiency of recipients).[42] And, if immigrants are spending more on housing and less on food or other necessities, local businesses will lose revenue, thus further multiplying the downstream economic impact.

D. Chicago Will Bear Additional Operational Costs.

Finally, above and beyond the costs to Chicago's economy associated with the forgone federal benefits and the drain on Chicago's resources flowing from the increased demand on Chicago's public services. Chicago would incur additional operational costs as a result of the Proposed Rule. As DHS acknowledges, "[a]t each level of government, it will also be necessary to prepare training materials and retrain staff." NPRM at 51270. These efforts include familiarizing City officials with the Proposed Rule so that they may ascertain what changes Chicago needs to make with respect to the federal and local benefits programs it administers; training employees at CDPH, DFSS, and other City departments (as well as City contractors and delegate agencies) so that they may properly guide immigrants and administer benefits; and providing educational and outreach services to immigrant communities about the scope of the Proposed Rule and its potential consequences. All of these efforts would require Chicago to expend additional human and financial resources.

V. CONCLUSION

As discussed, the Proposed Rule would have profound and wide-ranging negative effects on Chicago, its immigrant communities, and its population citywide. It is already causing confusion and fear among immigrant families in Chicago even though it is not yet in effect. Many immigrants are choosing to forgo critical aid for medical services, shelter, and food, as well as other supplemental aid that is not even included in the public charge determination, in order to protect their immigration status. This will severely impact not only immigrants' health, but also that of all Chicago residents. Furthermore, the loss of these benefits will increase immigrants' risk of hunger, homelessness, and poverty. Chicago would feel these effects not

[41] Available at https://www.brookings.edu/wp-content/uploads/2017/01/wp26_butcher_transfers_final.pdf

[42] Available at https://www.huduser.gov/portal/Publications/pdf/longterm.pdf

only through the loss of revenue from these federal benefits, but also from the increased demands on its own aid programs and services. More importantly, however, the Proposed Rule would frustrate Chicago's ability to serve the needs of its immigrant communities in the best and most robust manner, as it strives to do. For all of these reasons, Chicago urges DHS to withdraw the Proposed Rule.

Sincerely,

Mayor Rahm Emanuel
City of Chicago, IL